



INDIANA WILDLIFE FEDERATION

COMMON SENSE CONSERVATION SINCE 1938

RECEIVED JAN 26 2009

Conservation Technical Assistance Programs Division
U.S. Department of Agriculture
Natural Resources Conservation Service
1400 Independence Avenue, SW., Room 6015-S
Washington, DC 20250-2890.

Re: Comments on USDA State Technical Committee Interim Final Rule

USDA State Technical Committees provide invaluable advice to USDA officials at the state and local level, especially the USDA State Conservationist. In passing the 2008 Farm Bill, Congress made some changes to the language concerning those invited to serve on State Technical Committees, along with changes to the language outlining responsibilities of the committees. The Indiana Wildlife Federation wishes to provide some comments concerning those changes and appreciates the opportunity afforded us by the USDA to provide our recommendations.

The Indiana Wildlife Federation (IWF), one of the oldest conservation organizations in Indiana, is a statewide, non-profit organization of individuals, conservation clubs, and organizations dedicated to the wise use of our state's natural resources. IWF is involved in a wide variety of issues that affect the management of our natural resources on a local and state level, as well as the national level as the state affiliate of the National Wildlife Federation. And no issue is more important to human and wildlife long term survival than soil conservation and protecting the quality of our water supply.

The Indiana Wildlife Federation is currently represented on Indiana's State Technical Committee, has been for many years, and appreciates the opportunity to provide input and expert wildlife management advice on Natural Resource Conservation Service Programs. We hope we will continue to be afforded the opportunity to work directly with NRCS in Indiana, our State Conservationist and her excellent staff as a member of the State Technical Committee.

I. State Technical Committee Membership

The 2008 Farm Bill changed the language concerning the composition of the State Technical Committees. We believe that a careful reading of the statute does not preclude representatives from any particular agency or organization from serving on the committees, but rather simply narrows the list of agencies and organizations from which the State Conservationist is required to invite representatives.

As the rule notes, the statute drops the US Fish & Wildlife Service, and "other agency personnel with expertise in soil, water, wetland, and wildlife management as the Secretary determines appropriate," from the designated list of agencies and organizations. However, the new law says the technical committee "shall include representatives from among the following..." but the

language does not limit the technical committee to representatives from those agencies and organizations.

As the federal agency charged with implementing the Endangered Species Act and other important fish and wildlife conservation laws, the US Fish & Wildlife Service provides invaluable expertise on state technical committees. Other agencies, like USDA Rural Development; the U.S. Environmental Protection Agency; the Bureau of Land Management; the Bureau of Indian Affairs; the U.S. Geological Survey; the Bureau of Reclamation; the Army Corps of Engineers; and the state coastal zone management agency also provide valuable advice and information.

We believe the USDA is correct in providing that "the State Conservationist will invite representatives from these and other relevant Federal and State agencies, as well as the private sector, to participate as needed."

We would urge USDA to go further, and require by directive (not just allow) that USDA State Conservationists issue invitations to these agencies and organizations. Other state and regional agencies may also be able to provide valuable advice. The Chesapeake Bay Commission, an inter-state flyway council, a University expert, or a state climate change agency or energy office could also provide valuable advice within their expertise.

We ask USDA to broaden its language in the rule to read: "The State Conservationist will invite other relevant Federal, state and regional agencies, organizations, and persons knowledgeable about economic and environmental impacts of conservation techniques and programs to participate as needed." (section 610.22(b))

Finally, while we note that the state technical committees "shall include representatives from among...(12) Nonprofit organizations within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986 with demonstrable conservation expertise and experience working with agricultural producers in the State..." -- thus, in our view, requiring the State Conservationists to invite representatives from such organizations -- the statute does not *prohibit* persons from nonprofit organizations not fitting that description from serving on State Technical Committees. Where they are "professionals that represent a variety of disciplines in the soil, water, wetland and wildlife sciences," they can also contribute important expertise to the State Technical Committee.

We believe this is the intent of the language cited above in Section 610.22(b), but we would not want to have State Conservationists turn away otherwise valuable committee members because they don't fit the definition of an agency or organization required to be invited.

III. State Technical Committee Operating Procedures

The rules indicate that the Natural Resource Conservation Service (NRCS) plans to establish standard operating procedures for USDA State Technical Committees through directives made available to the public, and asks for comment on the scope of these directives. From the rules: "(b) NRCS shall establish and publish in a **Federal Register** notice national standard operating

procedures governing the operation of State Technical Committees and Local Working Groups. The standard operating procedures will outline items such as: The best practice approach to establishing, organizing, and effectively utilizing State Technical Committees and Local Working Groups; direction on publication of State Technical Committee and Local Working Group meeting notices and agendas; State Technical Committee meeting summaries; how to provide feedback on State Conservationist decisions regarding State Technical Committee recommendations; and other items as determined by the Chief of NRCS."

The 2008 Farm Bill requires that the Secretary develop "(1) standard operating procedures to standardize the operations of State technical committees; and (2) standards to be used by State technical committees in the development of technical guidelines under section 1262(b) for the implementation of the conservation provisions of this title."

We believe that the basic outline of procedures and standards should be published for public comment as part of this rulemaking, rather than developed as a directive. These procedures and standards are important to implementing the law, and believe they would benefit from public participation and comment. We understand that the details that fill out that outline would be appropriately filled in written directives published in the Federal Register.

In particular, whether published as a rule or a directive, we believe the procedures and standards should require the following at a minimum:

Notice of State Technical Committee (and subcommittee and local work group) meetings should be made to the public in advance of the meetings, and people interested in the meetings should have a means of requesting that they receive such notices;

People who request and are turned down from serving on a State Technical Committee (or subcommittee or local work group) should be told in writing and given an explanation of the reason they were turned down; and

USDA should maintain notices of upcoming meetings, minutes of past meetings, a current list of State Technical Committee members, and instructions for requesting a seat on the State Technical Committee on the NRCS web site for each state.

II. State Technical Committee Jurisdiction

We recognize that Congress changed the statute, removing language that provided specific responsibilities for State Technical Committees, while providing language that generally gives the State Technical Committees a range of general advisory responsibilities. We appreciate the long list of conservation programs that are included in the rule (section 610.24), but would note that some programs, such as the Cooperative Conservation Partnership Initiative, are not included.

As the National Wildlife Federation has noted in comments filed concerning the Agricultural Management Assistance program, nothing in the statutes appears to limit the State Technical Committee to provide advice on programs outside of the Conservation Title. We believe there

are instances where the expertise of the State Technical Committee can and should be sought to provide advice on those programs.

We therefore urge USDA to include after the long list of programs in section 610.24 the following sentence: "Each State Technical Committee may also provide advice on such other programs or conservation issues as may be requested by the State Conservationist."

IV. Local Work Groups

The rule provides that "(b) *Local Working Groups*. (1) A Local Working Group shall be composed of conservation district officials, agricultural producers representing the variety of crops and livestock or poultry raised within the local area, nonindustrial private forest land owners, and other professionals representing relevant agricultural and conservation interests and a variety of disciplines in the soil, water, plant, wetland, and wildlife sciences who are familiar with private land agricultural and natural resource issues in the local community."

We believe USDA's standard operating procedures for State Technical Committees should make it clear that USDA State Conservationists should invite a broad array of agencies, organizations, producers, and conservation professionals to serve on local work groups.

V. Appeals of State Technical Committee Membership Decisions

The proposed rule says "decisions of the State Conservationist concerning membership on the committee are final and are not subject to appeal" (pg 71523). We respect that State Conservationists should have broad latitude to invite and allow broad and varied expertise on State Technical Committees, while keeping the committee to a workable size. However, we do not believe that a decision as important as this should have no means of appeal in the event a decision was arbitrary or capricious.

We ask that USDA allow revise the rules to allow persons denied membership on the State Technical Committee to appeal that decision to the Secretary of Agriculture.

Thank you again for the opportunity to comment and offer recommendations

Yours in Conservation,



Glenn Lange
Wildlife Biologist and
Board Member of IWF

Cc: Jane Hardisty, State Conservationist
Indiana NRCS